

**Maryland Department of  
Health and Mental Hygiene**

**Guidance for Identifying External Business Associates**

Prepared By

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February 27, 2003

## 1. Introduction

**Note: Written contracts that were in existence before October 2002 and are not due for renewal before April 14, 2003 do not have to be modified to contain business associate language until the next renewal date before April 14, 2004.**

DHMH business units, with HIPAA covered health care components, are required to identify individuals or entities that:

- 1) perform or assist with a specific function or activity and/or provide certain identified services for (or on behalf of) covered health care components within their business unit; and
- 2) exchange individually identifying health information that is protected by the HIPAA Privacy Regulations (hereinafter referred to as "protected health information").

The provision of the above referenced services will constitute a business associate relationship that may require an agreement that includes required HIPAA language, to ensure the protection of health information. The initial step in identifying business associates is to categorize all service providers. **This Guidance will focus on identifying external contractors and vendors.**

External Business Associate: Public/Private Contractors/Vendors that perform specific services on behalf of the DHMH covered health care component and the activities involve the use or disclosure of protected health information that would make the contractor or vendor a business associate of a DHMH covered health care component.

Contractors that do not perform specific services that meet the requirements for a business associate relationship (i.e., no exchange of protected health information) will continue to be processed as routine contracted services, according to your standard contracting procedures. In order to implement the business associate standard, each contracted service will have to be evaluated as to whether it will be handled as a standard contract or whether it will be processed as a business associate agreement.

### **1.1. Identifying External Business Associates**

Initially, each of the business unit's contracts needs to be reviewed and evaluated as follows:

- 1) Does the contracted service affect the entire business unit (including the covered health care component)?
- 2) Does the contracted service affect only the covered health care component?
- 3) Does the contracted service not affect the covered health care component at all?
- 4) Is the service provided one of the services identified by HIPAA (see 1.2)?
- 5) Does the contracted service require the exchange of protected health information?

Conclusion: 1) If a service is provided for (or on behalf of) the covered health care component in any way, and 2) if protected health information is exchanged, this indicates a business associate relationship. If the evaluation does not support a business associate relationship, it should remain a standard contract.

### **1.2. Examples of Services and Functions that Require Business Associate Relationships**

The services listed in the left-hand column are identified in the HIPAA Regulations as those services for which a business associate relationship may *be* required. The items listed in the right-hand column are examples of activities or functions for which a business associate relationship may be required. This list is not exclusive, but does provide the most common functions or activities within the service categories.

#### **Legal Services**

Attorney Representing Agency-Consult your Assistant  
Attorney General

#### **Actuarial Services**

Benefits Management

#### **Accounting Services**

Patient Accounts Billing  
Claims Processing  
Claims Administration  
Bill Collections

#### **Consulting Services**

Professional Services  
Special Population Assessments (e.g., Olmstead  
interviews)

#### **Data Aggregation Services**

Data Analysis  
Data Processing  
Data Administration

#### **Management Services**

Practice Management  
Software Support  
Utilization Review  
Quality Assurance  
Contract Analysis

#### **Administrative Services**

Security  
Dietary  
Machine Maintenance  
Facility Maintenance  
Housekeeping  
Hardware Support  
Audits/Surveys  
Purchasing

#### **Accreditation Services**

JCAHO  
Council on Accreditation

#### **Financial Services**

Rate Setting

### **1.3. Examples of Services and Functions that May Not Require Business Associate Relationships**

**Bank services** The “financial transactions exception” does not require a business associate relationship between a DHMH covered health care component and a bank. For example, a business associate agreement is not required between a DHMH covered health care

component and a bank for transactions involving patients' personal funds or for processing credit card payments by patients for health care services.

**Courier services** A courier service or other postal service that transports medical records from a covered health care component to another entity is not a business associate of a DHMH covered component, because it does not use or disclose the protected health information in its possession.

**Maintenance services** Contracted services for facility maintenance such as tree-trimmers, carpet cleaners, landscapers, piano tuners and other services needed to maintain a facility or campus is not a business associate of a DHMH covered health care component when it does not use or disclose protected health information.

**Administrative Services** Contracted services for administrative maintenance such as office machine maintenance, housekeeping services and telephone repair is not a business associate of a DHMH covered health care component when it does not use or disclose protected health information.

## 2. Business Associate Chart

In an effort to reduce the confusion in identifying business associates, the PO will provide an Excel spreadsheet as a template for logging information by categories of potential business associates.

COLUMN	INSTRUCTIONS
<b>A</b>	Identify the name of the individual/agency or business unit within an agency that performs one of more services on your behalf. All DHMH organizations are pre-filled for review of applicability. Some state agencies are pre-filled.
<b>C-K</b>	Place an 'X' in the appropriate column, denoting the type of service the business unit provides on your behalf.
<b>L&amp;M</b>	If the service provided is for treatment, place an 'X' in the appropriate column, denoting if the service is treatment only or if the treatment service includes additional services such as utilization review.
<b>N</b>	Place an 'X' in this column if there is a service provider that you are uncertain as to the relationship that exists. Explain briefly in the 'Comments' column.
<b>P-R</b>	These columns denote whether or not PHI is exchanged with this service provider. If PHI is exchanged, place an 'X' in the appropriate column, denoting whether the exchange is electronic or paper/oral. If the exchange is both electronic and paper/oral, place a check in both columns. If no PHI is exchanged, place an 'X' in column R, "No".
<b>T</b>	A check in this column will indicate that the agency/contractor will be considered a member of covered health care component's workforce.
<b>U</b>	A check in any of the columns C-K, column M and columns P-Q equals a business associate relationship so place an 'X' in the column if all factors are met.
<b>V</b>	Enter the initiation date and the expiration date of any contracts currently in development or existence.
<b>W</b>	Include any free text comments.

### 2.1. Chart Distribution

Each covered health care component should retain the chart(s) as part of HIPAA due diligence documentation. A copy of the completed chart shall also be sent to the DHMH Privacy Office [kchavis@dhmh.state.md.us](mailto:kchavis@dhmh.state.md.us) or FAX 410-333-5941.